A **LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA**

v.

ONG LIAN CHEE

B COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
RAMLY ALI JCA
T SELVENTHIRANATHAN JCA
[CIVIL APPEAL NO: W-02-889-06]
C 11 MARCH 2010

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Dependent's claim to EPF for additional amount under s. 54(1)(a) read with s. 58(1) and the Fifth Schedule to the Employees Provident Fund Act*
D *1991 - Whether additional amount payable to defendant based on date of member's death or date of approval by EPF Board - Whether additional amount payable under s. 58(1) Employees Provident Fund Act 1991 to the dependent RM30,000 set out in Fifth Schedule (pre-amendment) or RM2,000 set out in Fifth Schedule (post amendment)*

E ***LIMITATION:*** *Cause of action - Accrual of - Whether cause of action accrued from date of death of deceased member or from date when EPF Board refused to grant authority for withdrawal of additional amount of RM30,000 - Whether defendant's claim time barred by s. 6(1)(d) Limitation Act 1953*
F

The Employees Provident Fund Board ("the EPF Board") appealed against the decision of the High Court judge in ordering the EPF Board to pay the EPF member's wife ("the dependent") a sum of RM30,000 being the additional amount claimed by the dependent
G under s. 54(1)(a) read with s. 58(1) of and the Fifth Schedule to the Employees Provident Fund Act 1991 ("the EPF Act 1991"). The deceased, an EPF member, had died and the wife, the dependent, applied for the withdrawal of all sums of money standing to the credit of the deceased with the EPF Board. The EPF Board
H approved the application for the withdrawal of the sums of money of the deceased on 27 September 2001 and 9 July 2002. The EPF Board paid a sum of RM2,000, instead of the RM30,000 claimed by the dependent. Pursuant to the dependent's originating summons filed in the High Court, the dependent obtained an order for the
I payment of the RM30,000. Hence, this appeal. The issues that

arose were (i) given the date of the deceased member's death on 12 October 1998, and upon the true construction of s. 54(1)(a) read with s. 58(1) and the Fifth Schedule, whether the additional payment payable to the dependent should be RM30,000 and (ii) whether dependent's claim was barred by s. 6(1)(d) of the Limitation Act 1953 on the ground that the originating summons was filed on 26 October 2005 seven years after the deceased's death.

Held (dismissing the appeal)
Per Low Hop Bing JCA delivering the judgment of the court:

(1) The dependent's right to recover the additional amount arose when her husband (the deceased) died on 12 October 1998, as that was the date on which the dependent lost the support as such dependent. Since the event which gave rise to the withdrawal of the deceased member's money was the death of the member, the additional amount payable to the dependent should be based on the date of the member's death, and not the subsequent date of approval by the EPF Board. On 12 October 1998, the additional amount set out in the Fifth Schedule was RM30,000. That was the (pre-amendment) law governing the matter and so the additional amount payable to the dependant under the Fifth Schedule should be the pre-amendment sum of RM30,000. The relevant amendment to the Fifth Schedule *vide* Act A1080 came into force only from 1 July 2000 *ie*, some 20 months after the death of the deceased member. That amendment had reduced the additional amount from RM30,000 to RM2,000. The reduction from RM30,000 to RM2,000, effective on and after 1 July 2000, had no retrospective effect and could not affect the deceased member who died on 12 October 1998. (paras 11 & 12)

(2) The cause of action would only accrue when the EPF Board refused to grant the authority for the withdrawal of the additional amount of RM30,000. The six year limitation period would not begin to run from the date of death of the deceased member, but from the date when the EPF Board rejected the dependent's claim and merely approved the payment of RM2,000 as the additional amount on 27 September 2001 and 9 July 2002. In the instant appeal, the dependent had in fact filed the originating summons on 26 October 2005 which was well within the time bar. The EPF Board's contention was dismissed as being devoid of merits. (para 23)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Kumpulan Wang Simpanan Pekerja ("KWSP") merayu terhadap keputusan Hakim Mahkamah Tinggi yang membuat perintah KWSP membayar isteri ahli KWSP ("pewaris") jumlah RM30,000 iaitu amaun tambahan yang dituntut oleh pewaris di bawah s. 54(1)(a) dibaca dengan s. 58(1) dan Jadual Kelima Akta Kumpulan Wang Simpanan Pekerja 1991 ("Akta KWSP 1991"). Simati, seorang ahli KWSP, telah meninggal dunia dan isterinya, pewaris, membuat permohonan untuk mengeluarkan wang yang berada di dalam akaun simati dengan KWSP. KWSP meluluskan permohonan untuk pengeluaran wang simati pada 27 September 2001 dan 9 Julai 2002. KWSP membayar jumlah RM2,000 dan bukan RM30,000 yang dituntut oleh pewaris. Di bawah saman pemula pewaris yang difailkan di dalam Mahkamah Tinggi, pewaris memperolehi satu perintah untuk bayaran RM30,000. Oleh itu, rayuan ini. Isu-isu yang timbul adalah (i) mengikut tarikh kematian simati pada 12 Oktober 1998, dan pada pentafsiran benar s. 54(1)(a) dibaca dengan s. 58(1) dan Jadual Kelima, sama ada amaun tambahan yang sepatutnya dibayar ke pewaris adalah RM30,000 dan (ii) sama ada tuntutan pewaris telah dihalang oleh s. 6(1)(d) Akta Had Masa 1953 atas alasan bahawa saman pemula difailkan pada 26 Oktober 2005 tujuh tahun selepas kematian simati.

Diputuskan (menolak rayuan)
Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) Hak pewaris untuk mendapatkan amaun tambahan timbul apabila suaminya (simati) meninggal dunia pada 12 Oktober 1998, kerana itu adalah tarikh pewaris kehilangan saraan dan tanggungan. Oleh kerana perkara yang menimbulkan pengeluaran wang simati adalah kematian simati, amaun tambahan yang sepatutnya dibayar ke pewaris adalah berdasarkan atas tarikh kematian simati, dan bukan tarikh kelulusan yang diberi oleh KWSP. Pada 12 Oktober 1998, amaun tambahan yang terdapat di dalam Jadual Kelima adalah RM30,000. Itu adalah undang-undang (sebelum pindaan) yang telah mentadbir halperkara dan amaun tambahan yang sepatutnya dibayar kepada pewaris di bawah Jadual Kelima iaitu amaun sebelum pindaan RM30,000. Pindaan relevan ke Jadual Kelima di bawah Akta A1080 hanya berkuatkuasa dari 1 Julai 2000 iaitu 20 bulan

selepas kematian simati. Pindaan tersebut telah mengurangkan jumlah amaun tambahan dari RM30,000 ke RM2,000. Pengurangan dari RM30,000 ke RM2,000 adalah efektif pada dan selepas 1 Julai 2000, dan tidak mempunyai kesan retrospektif dan tidak melibatkan simati yang telah meninggal dunia pada 12 Oktober 1998.

(2) Kausa tindakan terakru apabila KWSP tidak membenarkan pengeluaran amaun tambahan RM30,000. Had tempoh enam tahun tidak bermula dari tarikh kematian simati, tetapi dari tarikh KWSP menolak tuntutan pewaris dan hanya meluluskan bayaran RM2,000 sebagai amaun tambahan pada 27 September 2001 dan 9 Julai 2002. Di dalam rayuan ini, pewaris telah memfailkan saman pemula pada 26 Oktober 2005 dan ia tidak melebihi had masa yang diperuntukkan. Hujahan KWSP ditolak kerana tidak mempunyai apa-apa merit.

Case(s) referred to:

Credit Corp (M) Bhd v. Fong Tak Sin [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69 SC ***(refd)***

Golden Hope Plantations (Peninsular) Sdn Bhd (Ladang Sungei Senarut) v. Saraswathy Kathan [2009] 3 CLJ 335 CA ***(refd)***

Letang v. Cooper [1965] 1 QB 222 ***(refd)***

Lim Kean v. Choo Koon [1969] 1 LNS 94 HC ***(refd)***

Lim Kim Swee v. Tan Meng San [1960] 1 LNS 62 HC ***(refd)***

Nasri v. Mesah [1970] 1 LNS 85 FC ***(refd)***

Newacres Sdn Bhd v. Sri Alam Sdn Bhd [1991] 3 CLJ 2781; [1991] 1 CLJ (Rep) 321 SC ***(refd)***

Saw Gaik Beow v. Cheong Yew Weng & Ors [1989] 1 LNS 75 HC ***(refd)***

Sio Koon Lin & Anor v. SB Mehra [1980] 1 LNS 135 FC ***(refd)***

Taib Awang v. Mohamad Abdullah & Ors [1984] 1 CLJ 44; [1984] 2 CLJ (Rep) 501 HC ***(refd)***

Legislation referred to:

Employees Provident Fund Act 1991, ss. 54(1)(a), 58(1)
Interpretation Acts 1948 and 1967, s. 17A
Limitation Act 1953, s. 6(1)(d)

Other source(s) referred to:

Malaysian Court Practice, Lexis Nexis, 2007, Desk edn, p 144

For the appellant - Mubashir Mansor; M/s Skrine
For the respondent - K Sugunan; M/s Gomez & Assocs

[Appeal from High Court; Kuala Lumpur; Originating Summons No: S7-21-258-05]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Low Hop Bing JCA:

Appeal

B **[1]** The Employees Provident Fund Board ("the EPF Board") has appealed against the decision of the learned High Court judge in ordering the EPF Board to pay one Ong Lian Chee, the EPF member's wife ("the dependent"), a sum of RM30,000, being the additional amount claimed by the dependent under s. 54(1)(a) read C with s. 58(1) of and the Fifth Schedule to the Employees Provident Fund Act 1991 ("the EPF Act 1991"). (A reference hereinafter to a schedule and a section is a reference to that schedule and section respectively in the EPF Act 1991).

D **Undisputed Facts**

[2] One Goh Tin Poh ("the deceased") was an EPF member. He died on 12 October 1998. Subsequently, letters of administration had been granted to the deceased's estate. His wife, the dependent, sued as the administratrix of the deceased's estate.

E

[3] In August 2001, the dependent applied under s. 54(1)(a) for the withdrawal of all sums of money standing to the credit of the deceased with the EPF Board.

F **[4]** The EPF Board approved the application for the withdrawal of the sums of money standing to the credit of the deceased on 27 September 2001 and 9 July 2002. In invoking s. 54(1)(a), read with s. 58(1) and the Fifth Schedule (post amendment), the EPF Board paid a sum of RM2,000, instead of the RM30,000 claimed by G the dependent.

[5] Pursuant to the dependent's originating summons filed in the High Court, the dependent obtained an order for the payment of the RM30,000. Hence this appeal by the EPF Board.

H **Additional Amount**

[6] Mr Mubashir Mansor, of counsel for the EPF Board, states that the law that determines the additional amount payable is to be found in s. 58(1) read with the Fifth Schedule (post amendment) I which was in force when the EPF Board granted the approval under s. 54(1)(a).

[7] Learned counsel Mr K Sugunan contended for the dependent that, based on the deceased's date of death (12 October 1998), the additional amount payable under s. 58(1) to the dependent should be RM30,000 set out in the Fifth Schedule (pre-amendment) which was in force at the time of the deceased's death.

[8] On the basis of the above submissions, we formulated the question for determination as follows:

> Given the date of the deceased member's death on 12 October 1998, and upon the true construction of s. 54(1)(a) read with s. 58(1) and the Fifth Schedule, should the additional amount payable to the defendant be RM30,000?

[9] The relevant statutory provisions contained in ss. 54(1)(a) and 58(1) merit reproduction as follows:

> 54. Withdrawals from the Fund
>
> (1) The Board may authorize the withdrawal of all sums of money standing to the credit of the member of the Fund upon any terms and conditions as may be prescribed by the Board, if the Board is satisfied that:
>
> (a) the member of the Fund has died (Act A1080).
>
> 58. Payment of additional amount
>
> (1) Where authority for withdrawal under s. 54(1)(a) has been granted, an additional amount as set out in the Fifth Schedule shall be payable:
>
> Provided that ..... (not relevant). (Act A1080).

[10] Upon a careful reading, we find that ss. 54(1)(a), 58(1) and the Fifth Schedule are silent on whether the payment of the additional amount is to be based on the law applicable on the date when the member died or on the date of the EPF Board's approval.

[11] However, s. 54(1)(a) does make specific reference to the EPF Board's power to authorize withdrawal "if the EPF Board is satisfied that: (a) the member of the Fund has died." In our view, the dependent's right to recover the additional amount arose when her husband, Goh Tin Poh (the deceased), died on 12 October 1998, as that was the date on which the dependent lost the support as

such dependent. Since the event which gave rise to the withdrawal of the deceased member's money is the death of the member, the additional amount payable to the dependent should be based on the date of the member's death, and not the subsequent date of approval by the EPF Board.

[12] On 12 October 1998, the additional amount set out in the Fifth Schedule was RM30,000. That was the (pre-amendment) law governing the matter before us and so the additional amount payable to the dependent under the Fifth Schedule should be the pre-amendment sum of RM30,000. The relevant amendment to the Fifth Schedule *vide* Act A1080 came into force only from 1 July 2000 ie, some 20 months after the death of the deceased member. That amendment has reduced the additional amount from RM30,000 to RM2,000. The reduction from RM30,000 to RM2,000, effective on and after 1 July 2000, has no restrospective effect and could not affect the deceased member who died on 12 October 1998.

[13] Our view is consistent with the framework of the EPF Act 1991 which is a piece of social legislation wherein the underlying purpose or object is no doubt the promotion of the welfare of the members. In the context of beneficent social legislation, the provisions therein must receive a broad, liberal and functional or purposive interpretation: see *Golden Hope Plantations (Peninsular) Sdn Bhd (Ladang Sungei Senarut) v. Saraswathy Kathan* [2009] 3 CLJ 335 CA. Further, s. 17A of the Interpretation Acts 1948 and 1967 requires the adoption of a purposive approach to the construction of statutes and reads as follows:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote the purpose or object.

[14] Hence, we answer the above question in the affirmative.

Limitation Act 1953

[15] The EPF Board raised an alternative argument that even if the date of the deceased's death, 12 October 1998, is pertinent in determining the additional amount, the dependent's claim is barred by s. 6(1)(d) of the Limitation Act 1953 ("s. 6(1)(d)") on the ground that the originating summons was filed on 26 October 2005, seven years after the deceased's death.

[16] The dependent's response is that time only began to run from 27 September 2001 and 9 July 2002 when the EPF Board approved the additional amount of merely RM2,000 instead of the sum of RM30,000 sought by the dependent.

[17] The question raised herein is whether, on the facts, the dependent's originating summons is statute barred.

[18] Section 6(1)(d) provides for the limitation of actions to recover any sum recoverable, eg, by virtue of any written law, in the following words:

> 6. (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say:
>
> (a) ...;
>
> (b) ...;
>
> (c) ...; and
>
> (d) actions to recover any sum recoverable by virtue of any written law ...

[19] For the purpose of determining the issue of limitation under s. 6(1)(d), it is essential to identify the defendant's cause of action; the date of accrual thereof; and the expiration of the six-year limitation period.

[20] It is apposite to define the phrase "cause of action". It means 'simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person': per Diplock LJ in *Letang v. Cooper* [1965] 1 QB 222 at 242, [1964] 2 All ER 929 at 934. See also *Lim Kean v. Choo Koon* [1969] 1 LNS 94 HC; *Nasri v. Mesah* [1970] 1 LNS 85 FC; *Saw Gaik Beow v. Cheong Yew Weng & Ors* [1989] 1 LNS 75 HC; *Newacres Sdn Bhd v. Sri Alam Sdn Bhd* [1991] 3 CLJ 2781; [1991] 1 CLJ (Rep) 321 SC; and *Credit Corp (M) Bhd v. Fong Tak Sin* [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69 SC, as found in *Malaysian Court Practice* 2007 Desk Edn. Lexis Nexis p. 144.

[21] The dependent's cause of action relates to the recovery of the additional amount of RM30,000 arising from the death of the deceased member. It revolves around the exercise of the dependent's right to recover the RM30,000 by virtue of the written law contained in ss. 54(1)(a), 58(1) and the Fifth Schedule.

[22] The cause of action would only accrue when the EPF Board refused to grant the authority for the withdrawal of the additional amount of RM30,000 claimed by the dependent, and had instead approved the mere sum of RM2,000 on 27 September 2001 and 9 July 2002. The death *per se* of the deceased member on 12 October 1998 was not the factual situation which could have entitled the dependent to obtain a remedy against the EPF Board. In other words, the death *per se* could not have given rise to a cause of action in favour of the dependent at that stage. As at 12 October 1998, it was premature for the dependent to commence the originating summons against the EPF Board. At best, it was an incomplete cause of action, and the filing of an originating summons based on a premature cause of action is bound to be dismissed in limine: *Taib Awang v. Mohamad Abdullah & Ors* [1984] 1 CLJ 44; [1984] 2 CLJ (Rep) 501 HC; *Sio Koon Lin & Anor v. SB Mehra* [1980] 1 LNS 135 FC; and *Lim Kim Swee v. Tan Meng San* [1960] 1 LNS 62 HC, as found in *Malaysian Court Practice* Desk Edn Lexis Nexis p. 144.

[23] The six-year limitation period would not begin to run from the date of death of the deceased member, but from the date when the EPF Board rejected the dependent's claim for RM30,000, and merely approved the payment of RM2,000 as the additional amount on 27 September 2001 and 9 July 2002. Even by taking into account the earlier date of 27 September 2001, the six-year limitation period prescribed in s. 6(1)(d) would only lapse on 27 September 2007. In the instant appeal, the dependent had in fact filed the originating summons on 26 October 2005. That was well within the time bar. In the circumstances, we had no difficulty in dismissing the EPF Board's contention as being devoid of merits.

Conclusion

[24] On the foregoing grounds, we concluded that the learned High Court judge was correct in arriving at the above decision which we affirmed. This appeal was dismissed with costs of RM7,500 to the dependent. Deposit to the dependent on account of the fixed costs.